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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 DAN LEE,

6 Plaintiff,

7 v.

8 UNITED STATES OF AMERICA,

9 Defendant.

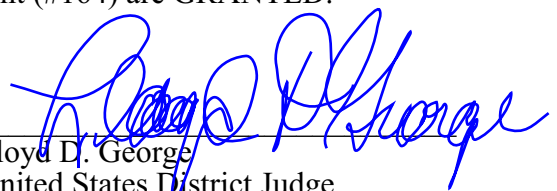
2:06-cv-0140-LDG-RJJ

ORDER

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11 On November 10, 2010, the United States of America filed a factual attack to subject matter
12 jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) or, in the alternative, a motion for summary
13 judgment (#163 and #164). On November 12, 2010, the court issued Klinge notices for each of
14 the alternative motions (#165 and #166). As the United States indicated in its reply brief (#167),
15 and up to this point, plaintiff has failed to file oppositions to either motion. Upon review of the
16 motions, the court finds that they have merit. Plaintiff has not, and cannot, produce medical expert
17 testimony as required by Nevada law to establish a case for medical malpractice, and the record
18 reflects that the Veteran's Administration medical providers met the standard of care regarding
19 plaintiff's claims in count 4. Accordingly, pursuant to LR 7-2 (d) (the failure of an opposing party
20 to file points and authorities in response to any motion shall constitute a consent to the granting of
21 the motion), and based on the authorities presented by the United States,

22 THE COURT HEREBY ORDERS that the United States' motion to dismiss pursuant to
23 Rule 12(b)(1) (#163) and motion for summary judgment (#164) are GRANTED.

24 DATED this 29 day of March, 2011.

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Lloyd D. George
United States District Judge